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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,855	02/26/2007	Arnaud Helie	Q92886	8096
23373	7590	05/27/2009	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			NGUYEN, DINH Q	
			ART UNIT	PAPER NUMBER
			3752	
			MAIL DATE	DELIVERY MODE
			05/27/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/565,855

Applicant(s)

HELIE ET AL.

Examiner

Dinh Q. Nguyen

Art Unit

3752

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 7-9 and 13-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 13-16 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The newly added claims 13-16 cite the method of manufacturing a spray head that citing the limitations of the non-elected claims 7-9, the limitations of the newly added claim 13 discloses forming a cavity with a cavity insert of a pin, providing a projection on the end of the pin that has a shape complementary to a non-radial spray channel, and the pin has the shape complementary to a spray head, which are fully disclosed in the non-elected claim 7. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 13-16 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 recites the limitations "the central axis X" and "the central axis (Y)" in line 5. There is insufficient antecedent basis for this limitation in the claim. The limitation "the spray head being characterized in that" should read --the spray head wherein that--.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-6, 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lund in view of Tate et al.

Lund discloses a fluid spray head in a fluid dispenser 20 comprising an expulsion channel 60 provided with a spray orifice 10 and a spray profile 11 formed in an end wall of the expulsion channel 60, the spray profile 11 comprising non-radial spray channels 74 opening out to a central spray chamber at point 16 disposed directly upstream from said spray orifice 12/13, the spray head being characterized in that the central axis 14/15 of said spray orifice 12/13 is offset from the central axis associated with focal point 16 of the spray chamber by a distance x (see figure 7) Tate does not disclose a spray orifice that is offset from the central axis of a spray chamber by a distance less than 0.08 mm. However, Tate et al. discloses a fluid spray head 10 with a spray orifice 20 that is offset from the central axis of a spray chamber 50 a distance x (see figure 4). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Lund with a spray orifice that is offset from the central axis of a spray chamber by a distance as suggested by Tate et al. Doing so would provide a high flowing rate swirling nozzle. With respect to the distance x, Tate et al. does not explicitly disclose that the distance x is less than 0.08 mm. At the time the invention was made, it

would have been an obvious matter of design choice to a person of ordinary skill in the art to provide the device of Tate et al. with the distance x that is less than 0.08 mm (see Tate et al. column 6, lines 1-6). One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either claimed distance x or the distance x of the Tate et al. Therefore, it would have been an obvious matter of design choice to modify the device of Tate et al. to obtain the invention as specified in the claim and because such modification, i.e. choosing from a finite number of predictable solutions, is not of innovation but of ordinary skill and common sense. *KSR, International Co. v. Teleflex Inc.*, 550 U.S. (2007).

With respect to claim 4 and 5, the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product in the prior art, the claim is unpatentable even though the prior product was made by a different process (see MPEP 2113).

Response to Arguments

2. Applicant's arguments filed February 19, 2009 have been fully considered but they are not persuasive in view of the Lund and Tate et al. references.
3. Applicant's arguments with respect to claims 1-6, 10-12 have been considered but are moot in view of the new ground(s) of rejection.
4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinh Q. Nguyen whose telephone number is 571-272-4907. The examiner can normally be reached on Monday-Thursday 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on 571-272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dinh Q Nguyen/
Primary Examiner, Art Unit 3752

dqn